

*a***PUBLIC PROSECUTOR**

v.

AZIZAN SALLEH & OTHER CASES

HIGH COURT MALAYA, IPOH

AJAIB SINGH J

b

[CRIMINAL REVISION NOS. 14, 15, 16 OF 1982]

24 JUNE 1983

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CRIMINAL LAW AND PROCEDURE: *Appeal - By Deputy Public Prosecutor against sentence - Rejected by learned Magistrate for want of specific reference - Notice of appeal - Whether should be specific - Whether as to the extent or legality of sentence - Whether rejection justified - Accused pleaded guilty and convicted.*

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All the three accused in these cases pleaded guilty and were fined by the learned Magistrate. The Deputy Public Prosecutor appealed against sentence in each case but the learned Magistrate rejected the notices of appeal on the ground that they were not properly filed because they did not specify whether the appeal was as to the extent of the sentence or whether it was as to the legality of the sentence and therefore did not comply with s. 305 of the Criminal Procedure Code.

The question to be determined was whether the learned Magistrate was justified in rejecting the notices of appeal in the form in which they were filed.

Held:*e*

[1] There is no valid reason to denounce the well established practice as unacceptable to merely state in the notice of appeal that the appeal is against sentence without mentioning whether it is as to the extent or legality of the sentence.

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[2] However, it cannot be denied that a clear form of notice specifying exactly what is appealed against would be desirable, but the omission to specify and merely to say in the notice of appeal that it is against sentence does not make the notice invalid. A notice of appeal in such form was adequate for the purpose of bringing an appeal against sentence under s. 305 of the Criminal Procedure Code and cannot be rejected by the Court.

[3] The three notices of appeal filed by the Deputy Public Prosecutor were directed to be accepted and acted upon under the Criminal Procedure Code.

[Notices of appeal accepted.]

*g***Legislation referred to:**

Criminal Procedure Code FMS Cap 6, s. 305

Order on Revision*h*

The accused in these three cases pleaded guilty and were fined by the learned Magistrate. The Deputy Public Prosecutor appealed against sentence in each case but the learned Magistrate rejected all the three notices of appeal. The learned Magistrate has written a lengthy note giving his reasons for rejecting the notices of appeal but the ground on which he actually rejected the notices appears to be that the notices did not comply with s. 305 of the Criminal Procedure Code which states that when an accused person has pleaded guilty and been convicted by a Magistrate on such plea there shall be no appeal except as to the extent or legality of the sentence. The learned Magistrate was of the view that the notice of appeal in each case was not properly filed because it did not specify whether the appeal was as to the extent of the sentence or whether it was as to the legality of the sentence.

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The learned Magistrate certainly has a point here because a specific reference in the notice of appeal either to the extent or to the legality of the sentence would not only go for clarity but also bring to the notice of the Magistrate what would be required of him to state in his grounds of decision. The question now is whether the learned Magistrate was justified in rejecting the notices of appeal in the form in which they were filed.

It is a well established practice in such cases to merely state in the notice of appeal that the appeal is against sentence without mentioning whether it is as to the extent or legality of the sentence. There has been no difficulty over this practice and there is no valid reason to denounce this practice as unacceptable. It cannot be denied that a clear form of notice specifying exactly what is appealed against would be desirable but I am of the view that the omission to so specify and merely to say in the notice of appeal that it is against sentence does not make the notice invalid. Even the official forms of the notice of appeal which are provided by the prison authorities to prisoners serving terms of imprisonment do not prescribe anything more than that the appeal is against sentence. In my view a notice of appeal in such form is adequate for the purpose of bringing an appeal against sentence under s. 305 of the Criminal Procedure Code and cannot be rejected by the Court. In the circumstances therefore I direct that the three notices of appeal filed by the learned Deputy Public Prosecutor be accepted and acted upon under the Criminal Procedure Code.

I would however urge that henceforth all notices of appeal against sentence should follow the provisions of s. 305 of the Criminal Procedure Code and specify exactly whether such appeal is as to the extent or legality of the sentence or both.

Also found at [1983] 2 CLJ 95

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